



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R01-OAR-2017-0202; FRL-9962-41-Region 1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Connecticut, New Hampshire, Rhode Island, and Vermont; Revisions to State Plan for Designated Facilities and Pollutants: New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving: negative declarations for commercial and industrial solid waste incinerators for the State of Connecticut, the State of New Hampshire, the State of Rhode Island, and the State of Vermont; negative declarations for hospital/medical/infectious waste incinerators for the State of Rhode Island; and revisions to the state plan for existing large and small municipal waste combustors for the State of New Hampshire. This action is being made in accordance with sections 111 and 129 of the Clean Air Act (CAA).

DATES: This direct final rule is effective [Insert date 60 days after date of publication in the Federal Register], unless EPA receives adverse comments by [Insert date 30 days after date of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2017-0202 at <https://www.regulations.gov>, or via email to bird.patrick@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically

any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxics, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: OEP05-2, Boston, MA, 02109-0287. Telephone: 617-918-1287. Fax: 617-918-0287. Email bird.patrick@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

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I. Background

Section 129 of the CAA requires EPA to establish performance standards and emission guidelines for various types of new and existing solid waste incineration units. These rulemakings establish emission standards for certain air pollutants, including organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, and mercury), hydrogen chloride, sulfur dioxide, nitrogen oxides, and particulate matter (which includes opacity).

Section 129(b)(2) requires states to submit to EPA for approval section 111(d)/129 plans that implement and enforce the promulgated emission guidelines. Section 129(b)(3) requires EPA to promulgate a federal plan within two years from the date on which the emission guidelines, or revision to the emission guidelines, is promulgated. The federal plan is applicable to affected facilities when the state has failed to receive EPA approval of the section 111(d)/129 plan. The federal plan remains in effect until the state submits and receives EPA approval of its section 111(d)/129 state plan.

State plans submitted pursuant to CAA sections 111(d) and 129 must be consistent with the relevant emission guidelines. If a state has no existing sources for the relevant emission

guideline, a state may submit a negative declaration in lieu of a state plan for that particular type of existing source solid waste incineration unit.

II. Commercial and Industrial Solid Waste Incinerators

Performance standards for new stationary source commercial and industrial solid waste incinerators (CISWI) and emission guidelines for existing source CISWI were originally promulgated on December 1, 2000 (65 FR 75338). These rulemakings underwent a number of revisions and amendments throughout the 2000s, with the most recent amendments being finalized on June 23, 2016 (81 FR 40956). Due to significant changes to applicability in the March 21, 2011 CISWI rulemaking, EPA required states to resubmit state plans for existing source CISWI. *See* 76 FR 15704 and 78 FR 9112. Existing source CISWI units are those which have commenced construction on or before June 4, 2010 or modified no later than August 7, 2013. The emission guidelines for existing source CISWI is codified at 40 CFR Part 60, Subpart DDDD.

A. Connecticut

Connecticut Department of Energy & Environmental Protection (CT DEEP) submitted a negative declaration on September 1, 2015 certifying no existing source CISWI units operate within the State of Connecticut. CT DEEP noted the energy recovery incinerator located at Pfizer, Inc. in Groton, Connecticut ceased operation in 2008. The unit's permits were revoked, and the incinerator was rendered inoperable.

B. New Hampshire

The New Hampshire Department of Environmental Services (NH DES) submitted a negative declaration on September 25, 2013 certifying no existing source CISWI units operate within the State of New Hampshire. NH DES noted that an existing source

CISWI unit located at D.D. Bean & Sons Co. in Jaffrey, New Hampshire ceased operating in January 2005. The unit was completely dismantled in August 2005. NH DES has requested its state plan for existing source CISWI, approved by EPA on February 10, 2003 (68 FR 6635), be withdrawn and the negative declaration be approved in its stead.

C. Rhode Island

The Rhode Island Department of Environmental Management (RI DEM) submitted a negative declaration on August 19, 2015 certifying no existing source CISWI units operate within the State of Rhode Island. This certification serves to update a previous negative declaration for existing source CISWI approved by EPA on April 12, 2002 (67 FR 17946).

D. Vermont

The Vermont Department of Environmental Conservation (VT DEC) submitted a negative declaration on July 26, 2013 certifying no existing source CISWI units operate within the State of Vermont. This certification serves to update a previous negative declaration for existing source CISWI approved by EPA on December 11, 2001 (66 FR 63940).

III. Hospital/Medical/Infectious Waste Incinerators

Performance standards for new stationary source hospital/medical/infectious waste incinerators (HMIWI) and emission guidelines for existing source HMIWI were originally promulgated on September 15, 1997 (62 FR 48348). The rulemakings underwent a number of revisions and amendments throughout the 2000s, with the most recent amendments being finalized on April 4, 2011(76 FR 18407). Existing source HMIWI units are those which have commenced

construction on or before December 1, 2008 or modified no later than April 6, 2010. The emission guidelines for existing source HMIWI are codified at 40 CFR Part 60, Subpart Ce.

A. Rhode Island

RI DEM submitted a negative declaration on February 8, 2011 certifying no existing source HMIWI units operate within the State of Rhode Island. All HMIWI units within the state have permanently ceased operation. On August 19, 2015, RI DEM requested its state plan for existing source HMIWI, approved by EPA on April 27, 2001 (66 FR 21092), be withdrawn and the negative declaration be approved in its stead.

IV. Large and Small Municipal Waste Combustors

Performance standards for new stationary source large municipal waste combustors (MWC) and emission guidelines for existing large MWCs were originally promulgated on February 11, 1991 (54 FR 52251). Large MWC rulemakings underwent a number of revisions and amendments throughout the 1990s and early 2000s, with the most recent amendments being finalized on May 10, 2006 (71 FR 18407). Performance standards for new stationary source small MWCs and emission guidelines for existing small MWCs were originally promulgated on December 6, 2000 (65 FR 76350 and 65 FR 76378). Existing large MWC units are those which have commenced construction on or before September 20, 1994 or modified no later than June 19, 1996. The emission guidelines for existing source large MWCs are codified at 40 CFR Part 60, Subpart Cb. Existing source small MWC units are those which have commenced construction on or before August 30, 1999 or modified no later than June 21, 2001. The emission guidelines for existing small MWCs are codified at 40 CFR Part 60, Subpart AAAA.

A. New Hampshire

EPA approved the New Hampshire large and small MWC state plan on February 10, 2003 (68 FR 6630). The implementing and enforceable regulation for the New Hampshire large and small MWC state plan is CHAPTER Env-A 3300 MUNICIPAL WASTE COMBUSTION. On January 29, 2009, NH DES submitted revisions to its large and small MWC state plan, specifically revisions to Env-A 3300, in order to make New Hampshire's state plan consistent with EPA's 2006 amendments to the large MWC emission guidelines. A technical amendment to the January 2009 submittal was submitted on February 13, 2009. EPA approved New Hampshire's state plan revisions on September 3, 2014 (79 FR 52204).

In early 2016, the New Hampshire General Court revised 125-C:10-a, a state statute that establishes emission limits for large and small MWC units. The revised legislation increased the stringency of emission limits for existing small MWCs for particulate matter, cadmium, lead, and dioxin/furans. The revised emission limits for existing small MWCs are now identical to those of existing large MWCs for those particular pollutants. Revision to 125-C:10-a became effective on July 18, 2016.

In anticipation of the legislative action, NH DES revised Env-A 3300. Revisions to Env-A 3300 incorporated by reference 125-C:10-a and added a table to Env-A 3300 at Appendix D summarizing the most stringent emission limits applicable to existing small MWCs in New Hampshire. Other inconsequential formatting changes were made to Env-A 3300. Overall, the revised emission limits for existing source small MWCs make the New Hampshire regulation more stringent than federal standards for existing small MWCs.

NH DES submitted the amended Env-A 3300 as a state plan revision on July 28, 2016.

NH DES provided adequate public notice of public hearings for the proposed rulemaking Env-A 3300.

V. Final Actions

EPA is approving CISWI negative declarations for the State of Connecticut, the State of Rhode Island, and the State of Vermont. EPA is approving the withdrawal of the New Hampshire CISWI state plan and approving the state's negative declaration. EPA is approving the withdrawal of the Rhode Island HMIWI state plan and approving the state's negative declaration. These negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source categories.

EPA is approving revisions to the New Hampshire state plan for large and small MWCs. EPA's approval of the New Hampshire's state plan is based on our findings that:

- NH DES provided adequate public notice of public hearings for the proposed rulemaking that allows New Hampshire to carry out and enforce provisions that are at least as protective as the emission guidelines for large and small MWCs, and;
- NH DES demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

EPA is publishing these actions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in the proposed

rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declarations, State Plan withdrawal, and technical corrections should relevant adverse comments be filed. This rule will be effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days after date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days after date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the CAA and applicable Federal regulations. 40 CFR 62.04. Thus, in reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this direct final rulemaking is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

April 20, 2017.

Deborah A. Szaro,
Acting Regional Administrator,
EPA New England.

Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

2. Add § 62.1750 and an undesignated center heading to subpart H to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incineration Units

§ 62.1750 Identification of plan—negative declaration.

On September 1, 2015, the State of Connecticut Department of Energy and Environmental Protection submitted a letter certifying no Commercial and Industrial Solid Waste Incineration units subject to 40 CFR 60, subpart DDDD operate within the state's jurisdiction.

Subpart EE—New Hampshire

3. Amend § 62.7325 by:

- a. Removing and reserving paragraph (b)(3);
- b. Adding paragraph (b)(4)(ii); and
- c. Removing and reserving paragraph (c)(3).

The addition reads as follows:

§ 62.7325 Identification of plan.

* * * * *

(b) * * *

(4) * * *

(ii) Revised State Plan for Large and Small Municipal Waste Combustors was submitted on July 28, 2016. Revisions included amendments to New Hampshire Code of Administrative Rules Env-A 3300 Municipal Waste Combustion in response to more stringent emission limits for Small MWCs enacted by the New Hampshire General Court in 2016 and codified at New Hampshire Revised Statutes Annotated 125-C:10-a.

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4. Revise § 62.7455 to read as follows:

§ 62.7455 Identification of plan—negative declaration.

On September 25, 2013 the State of New Hampshire Department of Environmental Services submitted a letter certifying no Commercial and Industrial Solid Waste Incineration units subject to 40 CFR part 60, subpart DDDD operate within the state’s jurisdiction.

Subpart OO—Rhode Island

5. Add an undesignated center heading preceding § 62.9825 to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.9825 [Amended]

6. Section 62.9825 is amended by removing and reserving paragraphs (b)(1) and (c)(1).

7. Revise § 62.9990 to read as follows:

§ 62.9990 Identification of plan – negative declaration.

On September 25, 2013 the State of Rhode Island Department of Environmental Management submitted a letter certifying no Hospital/Medical/Infectious Waste Incinerators units subject to 40 CFR part 60, subpart Ce operate within the state’s jurisdiction.

Subpart UU—Vermont

8. Revise § 62.11480 to read as follows:

§ 62.11480 Identification of plan—negative declaration.

On July 26, 2013, the State of Vermont Department of Environmental Conservation submitted a letter certifying no Commercial and Industrial Solid Waste Incineration units subject to 40 CFR part 60, subpart DDDD operate within the state's jurisdiction.

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